STATE OF MICHIGAN

COURT OF APPEALS

LAFARGE MIDWEST, INC., Petitioner-Appellee,	FOR PUBLICATION October 12, 2010
v	No. 289292 Tax Tribunal
CITY OF DETROIT, Respondent-Appellant.	LC No. 00-318224; 00-328284; 00-328928 Advance Sheets Version

Before: JANSEN, P.J., and CAVANAGH and K. F. KELLY, JJ.

K. F. KELLY, J. (*dissenting*).

I respectfully dissent. I disagree with the majority's interpretation of the phrase "of the local government unit" in MCL 211.7ff(2)(b) as applying to both "obligations approved by the electors" and "obligations pledging the unlimited taxing power." Despite its conclusion that the provision is unambiguous, the majority reads additional terms into MCL 211.7ff(2)(b) and, thus, its holding is contrary to the plain language of the statute and also to the rules of statutory construction. In my view, the language of MCL 211.7ff(2)(b) is clear and unambiguous, and judicial construction of its language is not permitted. I would apply the plain and ordinary meaning of the provision to the circumstances at issue and reverse the Tax Tribunal's decision that respondent improperly assessed the tax.

This Court reviews the Tax Tribunal's interpretation of a statute de novo. See *Pittsfield Charter Twp v Washtenaw Co*, 468 Mich 702, 707; 664 NW2d 193 (2003). When interpreting the meaning of a statute, this Court's goal is to determine and give effect to the Legislature's intent. The first step is to review the language used. *Institute in Basic Life Principles, Inc v Watersmeet Twp (After Remand)*, 217 Mich App 7, 12; 551 NW2d 199 (1996). The Legislature is presumed to intend the meaning that is plainly expressed by the words written. *Id*. If the language of a statute is clear and unambiguous, then judicial construction is not necessary, nor is it even permitted, *Mt Pleasant v State Tax Comm*, 477 Mich 50, 53; 729 NW2d 833 (2007), and this Court must apply as written the language of the statute to the facts at issue, *People v Barbee*, 470 Mich 283, 286; 681 NW2d 348 (2004), even if it results in an absurd outcome, *Decker v Flood*, 248 Mich App 75, 84; 638 NW2d 163 (2001). A statutory provision "is ambiguous only if it 'irreconcilably conflict[s]' with another provision or when it is *equally* susceptible to more than a single meaning." *Lansing Mayor v Pub Serv Comm*, 470 Mich 154, 166; 680 NW2d 840 (2004) (citation omitted; alteration in original). Further, I must emphasize that the reason for these well-established rules of statutory interpretation is to ensure that the courts of this state adhere to their judicial role of applying the law and do not overstep their bounds by acting in a

legislative capacity. In other words, the rules of statutory interpretation necessarily mandate judicial restraint in order to ensure the integrity of the separate branches of government. "[I]n our democracy, a legislature is free to make inefficacious or even unwise policy choices. The correction of these policy choices is not a judicial function as long as the legislative choices do not offend the constitution." *Decker*, 248 Mich App at 84 (citation and quotation marks omitted; alteration in original).

The facts of this matter are not in dispute. Rather, the central issue is a question of law: Whether petitioner is subject to ad valorem tax liability under the language of MCL 211.7ff(2)(b). The Tax Tribunal answered this question in the negative, determining that the Legislature's intent under the Michigan Renaissance Zone Act (RZA), MCL 125.2681 *et seq*., directed this result.

The Legislature enacted the RZA to assist "local governmental units in encouraging economic development" by permitting the creation of renaissance zones within which entities would be provided temporary relief from certain taxes. MCL 125.2682. Consistent with this purpose, MCL 125.2689(2)(a) of the RZA provides, in part, that "property located in a renaissance zone is exempt from the collection of taxes under . . . [s]ection 7ff of the general property tax act [(GPTA)], 1893 PA 206, MCL 211.7ff." And consistent with this mandate, MCL 211.7ff(1) provides an exemption from taxation under the GPTA:

> For taxes levied after 1996, except as otherwise provided in subsection[] (2) . . . , real property in a renaissance zone and personal property located in a renaissance zone is exempt from taxes collected under this act to the extent and for the duration provided pursuant to the Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696.

Subsection 2 of MCL 211.7ff provides a list of exceptions to this exemption:

> Real and personal property in a renaissance zone is not exempt from collection of the following:
>
> (a) A special assessment levied by the local tax collecting unit in which the property is located.
>
> (b) *Ad valorem property taxes specifically levied for the payment of principal and interest of obligations approved by the electors or obligations pledging the unlimited taxing power of the local governmental unit.*
>
> (c) A tax levied under section 705, 1211c, or 1212 of the revised school code, 1976 PA 451, MCL 380.705, 380.1211c, and 380.1212. [MCL 211.7ff(2) (emphasis added).]

In other words, under these limited circumstances the exemption from taxation under the GPTA, which is mandated by the RZA, does not apply and an entity will be subject to tax liability.

The only exception to the exemption that is at issue here is MCL 211.7ff(2)(b). Under this provision, an entity with real or personal property in a renaissance zone will be subject to an

ad valorem property tax that was "specifically levied for the payment of principal and interest of [(1)] obligations approved by the electors or [(2)] obligations pledging the unlimited taxing power of the local governmental unit." *Id.* A plain reading of this provision's terms reveals no ambiguity. Reasonable minds cannot differ in the conclusion that this provision provides an exception to the RZA exemption if an ad valorem tax is levied for obligations approved by the electors *or* for obligations pledging the unlimited taxing power of the local governmental unit. Simply put, an ad valorem tax will be applicable if either of these two types of obligations exist.

Despite its conclusion that MCL 211.7ff(2)(b) is unambiguous, the majority somehow concludes that the exception to the exemption found in it only applies if an ad valorem tax is levied for obligations approved by the electors *of a local governmental unit* or obligations pledging the unlimited taxing power of the local governmental unit. This construction bends the rules of statutory interpretation and adds additional language to the statute. Nothing in the plain language of MCL 211.7ff(2)(b) specifies or limits which "electors" must approve the obligation. The majority's conclusion that the electors must be "of the local governmental unit," which by definition does not include school boards[1] (and would mean that the exception language would not apply), is contrary to the plain language of the provision. The phrase "of the local governmental unit" only refers to the immediately antecedent phrase, i.e., "obligations pledging the unlimited taxing power." Nothing in the grammatical structure of MCL 211.7ff(2)(b) suggests that "of the local governmental unit" also applies to the phrase "obligations approved by the electors." This construction comports with the common grammatical rule of construction, and a common understanding of the English language, "that a modifying clause will be construed to modify only the last antecedent unless some language in the statute requires a different interpretation." *People v Small*, 467 Mich 259, 263 & n 4; 650 NW2d 328 (2002) (noting that "[u]nless set off by commas, a modifying word or phrase, where no contrary intention appears, refers solely to the last antecedent"). "[T]he statutory language must be read and understood in its grammatical context." *People v Jackson*, 487 Mich 783, 791; 790 NW2d 340 (2010). The majority's interpretation ignores this grammatical rule by adding a comma before the modifying phrase "of a governmental unit" and thereby reading an otherwise nonexistent limitation into the statute—that "obligations approved by electors" means obligations approved by electors of a local governmental unit, which only includes counties, cities, villages, or townships. "[A court] cannot read restrictions or limitations into a statute that plainly contains none." *Rusnak v Walker*, 273 Mich App 299, 305; 729 NW2d 542 (2006).

The majority further justifies its interpretation by opining that the failure to add the phrase "of a governmental unit" after "obligations approved by the electors" renders the term "the," as used before "electors," nugatory. It is true that the article "the" is a definite article that may have a specifying effect in some contexts. However, it does not follow that the term "the" is necessarily rendered surplusage if the phrase "obligations approved by *the* electors" is not read to mean "obligations approved by *the* electors [of the local governmental unit]." I would note that

[1] Currently, section 3(g) of the RZA, MCL 125.2683(g), defines "local governmental unit" as "a county, city, village, or township." At other times relevant to this case, the definition has appeared in different subdivision of this section.

the article "the" may also be used to designate a noun "as being used generically," *Random House Webster's College Dictionary* (1997),[2] and that that is how the Legislature used the term "the" here. The majority, however, defines the term "the" to require that the particular electors be defined and then goes a step further to conclude that those electors must be "of the local governmental unit." This is not what the provision states.

I agree with the majority that statutory provisions must not be read in isolation, but in the context of the statutory scheme as a whole. See *Robinson*, 486 Mich at 15. However, nothing in the language of MCL 211.7ff(2) renders my interpretation "inherently inconsistent" with the statutory language or the overall scheme of the statute, as the majority asserts. As previously stated, MCL 211.7ff(2) provides a list of exceptions to the RZA exemption:

> Real and personal property in a renaissance zone is not exempt from collection of the following:
>
> (a) A special assessment levied *by the local tax collecting unit* in which the property is located.
>
> (b) Ad valorem property taxes specifically levied for the payment of principal and interest of obligations approved *by the electors* or obligations pledging the unlimited taxing power *of the local governmental unit*.
>
> (c) A tax levied under section 705, 1211c, or 1212 of the revised school code, 1976 PA 451, MCL 380.705, 380.1211c, and 380.1212. [Emphasis added.]

The majority implies that because the statute's "exemption does not apply to '[a] special assessment levied *by the local tax collecting unit*' or to '[a]d valorem property taxes levied for payment of . . . obligations pledging the unlimited taxing power *of the local governmental unit,*'" it must also follow that the ad valorem tax levied under MCL 211.7ff(2)(b) for obligations approved by the electors must be approved by "'*the* electors' of the local governmental unit" rather than "*any* group of 'electors' . . . ." This position is logically untenable; it is based on erroneous deductive reasoning in regard to the relationship between subdivisions (a) and (b) of MCL 211.7ff(2). Moreover, I would also point out that the Legislature's inclusion in subdivision (c) of MCL 211.7ff(2) of an exception to the RZA exemption for taxes levied under the Revised School Code does not mandate the conclusion that MCL 211.7ff(2)(b) must be construed to preclude an ad valorem tax levied for an obligation approved by electors who happen to be a particular school district's electors. And it must be noted that a school district can encompass more than one discrete local governmental unit or only part of one or more local governmental units. Had the Legislature wished to preclude such an outcome, it could have included the language "of a local governmental unit" after the phrase "obligations approved by the electors." It chose not to do so. The majority has otherwise failed to explain what inherent inconsistency arises within the statutory scheme if MCL 211.7ff(2)(b) is given its plain and ordinary meaning,

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[2] An example of how the term "the" may be used in this way is the following: "The dog is a quadruped." *Random House Webster's College Dictionary* (1997).

i.e., the RZA exemption is inapplicable if an ad valorem tax is levied for obligations approved by the electors or for obligations pledging the unlimited taxing power of the local government unit.

For the foregoing reasons, I disagree with the majority's construction of MCL 211.7ff(2)(b), which impermissibly interprets that unambiguous provision and concludes that "the phrase 'of the local governmental unit' clearly applies to both the 'obligations approved by the electors' and the 'obligations pledging the unlimited taxing power.'" Under the circumstances of this case, an ad valorem tax was levied that was a school debt service tax of 13 mills as a result of the school district electors' approval of $116,156,390 in bonds. This was an "obligation[] approved by the electors," and therefore petitioner is subject to taxation under MCL 211.7ff(2)(b). Petitioner cannot avail itself of the RZA's exemption because the factual circumstances fall within the exception to the exemption. I would conclude, then, that the taxes were properly levied against petitioner. I would reverse the decision of the Tax Tribunal.

/s/ Kirsten Frank Kelly